

**FILED**

**MAR 13 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

ESTATE OF EMANUEL TROMPETER,  
DECEASED; ROBIN CAROL  
TROMPETER GONZALEZ; JANET  
ILENE TROMPETER POLACHEK,

Petitioners-Appellants,

v.

COMMISSIONER OF INTERNAL  
REVENUE,

Respondent-Appellee.

No. 04-73238

TC No. 11170-95

MEMORANDUM<sup>\*</sup>

Appeal from a Decision of the  
United States Tax Court

Argued and Submitted February 17, 2006  
Pasadena, California

Before: B. FLETCHER, TASHIMA, and CALLAHAN, Circuit Judges.

Petitioners-Appellants, the Estate of Emanuel Trompeter and the decedent's daughters (collectively "Taxpayers"), appeal the decision of the Tax Court on remand from a prior decision of this court. See Estate of Trompeter v. Comm'r,

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

279 F.3d 767 (9th Cir. 2002); Trompeter v. Comm’r, 87 T.C.M. 851 (2004). We have jurisdiction pursuant to 26 U.S.C. § 7482.

We affirm the Tax Court in all respects, except for its finding that there were 31 additional coins.<sup>1</sup> The fact that the notation in the diary stated that “approximately” 500 coins had been given to Ira Goldberg indicates that this was an estimate, not the exact number of coins. This notation was the only evidence relied upon by the Tax Court for its finding that there were 31 additional coins. The letter from Superior Stamp & Coin Co.’s lawyer, stating that Superior had failed to pay for the sale of two coins and that Superior still held two other coins, also supports Taxpayers’ contention that all of the coins were accounted for. We therefore conclude that there is no basis in the evidence for the Tax Court’s finding that there were 31 unaccounted-for additional coins. Thus, its finding was clearly erroneous. See Charlotte’s Office Boutique, Inc. v. Comm’r, 425 F.3d 1203, 1211 (9th Cir. 2005) (stating that the Tax Court’s findings of fact are reviewed for clear error).

We affirm the Tax Court in all other respects, including its fraud finding. Taxpayers’ concealment and undervaluation of assets amply support the Tax

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<sup>1</sup> The facts are fully set forth in the Tax Court’s opinion and our prior opinion, and we do not repeat them here.

Court's finding of fraud. But we reverse the Tax Court's finding that there were an additional 31 coins for which Taxpayers failed to account, and remand for further proceedings consistent with this disposition. Each side shall bear its own costs on appeal.

**AFFIRMED in part, REVERSED in part, and REMANDED.**